

IN RE WILL OF THE DECEASED JOSE B. SUNTAY. MARIA NATIVIDAD LIM BILLIAN, PETITIONER AND APPELLANT, VS. APOLONIO SUNTAY, ANGEL SUNTAY, MANUEL SUNTAY, AND JOSE SUNTAY, OPPOSITORS A...

G. R. No. 44276. November 25, 1936

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

On May 14, 1934, Jose B. Suntay died in the City of Amoy, China. He married twice, the first time to Manuela T. Cruz with whom he had several children now residing in the Philippines, and the second time to Maria Natividad Lim Billian with whom he had a son.

On the same date, May 14, 1934, Apolonio Suntay, eldest son of the deceased by his first marriage, filed the latter's intestate in the Court of First Instance of Manila (civil case No. 4892).

On October 15, 1934, and in the same court, Maria Natividad Lim Billian also instituted the present proceedings for the probate of a will allegedly left by the deceased.

According to the petitioner, before the deceased died in China he left with her a sealed envelope (Exhibit A) containing his will and, also another document (Exhibit B of the petitioner) said to be a true copy of the original contained in the envelope. The will in the envelope was executed in the Philippines, with Messrs. Go Ton, Alberto Barretto and Manuel Lopez as attesting witnesses. On August 25, 1934, Go Toh, as attorney-in-fact of the petitioner, arrived in the Philippines with the will in the envelope and its copy Exhibit B. While Go Toh was showing this envelope to Apolonio Suntay and Angel Suntay, children by first marriage of the deceased, they snatched and opened it and, after getting its contents and throwing away the envelope, they fled.

Upon these allegations, the petitioner asks in this case that the brothers Apolonio, Angel, Manuel and Jose Suntay, children by the first marriage of the deceased, who allegedly have the document contained in the envelope which is the will of the deceased, be ordered to present it in court, that a day be set for the reception of evidence on the will, and that the petitioner be appointed executrix pursuant to the designation made by the deceased in the will.

In answer to the court's order to present the alleged will, the brothers Apolonio, Angel, Manuel and Jose Suntay, stated that they did not have the said will and denied having snatched it from Go Toh.

In view of the allegations of the petition and the answer of the brothers Apolonio, Angel, Manuel and Jose Suntay, the questions raised herein are: The loss of the alleged will of the deceased, whether Exhibit B accompanying the petition is an authentic copy thereof, and whether it has been executed with all the essential and necessary formalities required by law for its probate.

At the trial of the case on March 26, 1934, the petitioner put two witnesses upon the stand, Go Toh and Tan Boon Chong, who corroborated the allegation that the brothers Apolonio and Angel appropriated the envelope in the

circumstances above-mentioned. The oppositors have not adduced any evidence counter to the testimony of these two witnesses. The court, while making no express finding on this fact, took it for granted in its decision; but it dismissed the petition believing that the evidence is insufficient to establish that the envelope seized from Go Toh contained the will of the deceased, and that the said will was executed with all the essential and necessary formalities required by law for its probate.

In our opinion, the evidence is sufficient to establish the loss of the document contained in the envelope. Oppositors' answer admits that, according to Barretto, he prepared a will of the deceased to which he later became a witness together with Go Toh and Manuel Lopez, and that this will was placed in an envelope which was signed by the deceased and by the instrumental witnesses. In court there was presented and attached to the case an open and empty envelope signed by Jose B. Suntay, Alberto Barretto, Go Toh and Manuel Lopez. It is thus undeniable that this envelope Exhibit A is the same one that contained the will executed by the deceased—drafted by Barretto and with the latter, Go Toh and Manuel Lopez as attesting witnesses. These tokens sufficiently point to the loss of the will of the deceased, a circumstance justifying the presentation of secondary evidence of its contents and of whether it was executed with all the essential and necessary legal formalities.

The trial of this case was limited to the proof of loss of the will, and from what has taken place we deduce that it was not petitioner's intention to raise, upon the evidence adduced by her, the other points involved herein, namely, as we have heretofore indicated, whether Exhibit B is a true copy of the will and whether the latter was executed with all the formalities required by law for its probate. The testimony of Alberto Barretto bears importantly in this connection.

Wherefore, the loss of the will executed by the deceased having been sufficiently established, it is ordered that this case be remanded to the court of origin for further proceedings in obedience to this decision, without any pronouncement as to the costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Conception, JJ., concur.

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